

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

STEVEN VINCENT SANTOSTEFANO,
Petitioner.

No. 2 CA-CR 2016-0099-PR
Filed May 31, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2010121283003DT
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Robert E. Prather, Deputy County Attorney, Phoenix
Counsel for Respondent

Steven V. Santostefano, Eloy
In Propria Persona

STATE v. SANTOSTEFANO
Decision of the Court

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 After a jury trial, petitioner Steven Santostefano was convicted of possession of dangerous drugs for sale, possession of narcotic drugs for sale, possession of marijuana for sale, and possession of drug paraphernalia. The trial court sentenced him to concurrent prison terms, the longest of which was twelve years. This court affirmed the convictions and sentences on appeal. *State v. Santostefano*, No. 1 CA-CR 11-0635 (memorandum decision filed Sept. 6, 2012). In this petition for review, he challenges the trial court's order dismissing his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and denying his motion for rehearing. We will not disturb the orders absent a clear abuse of discretion. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 The trial court appointed counsel to represent Santostefano in this post-conviction proceeding and pursuant to *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614 (1995), counsel filed a notice stating he had reviewed the case and was "unable to find a meritorious issue" to raise. Santostefano filed a pro se petition for post-conviction relief in which he raised a claim of ineffective assistance of trial counsel. He asserted counsel had performed deficiently in connection with the plea-bargain process, pre-trial preparation, the motion to suppress evidence, and the jury-selection process. With regard to the latter, Santostefano argued counsel had not asked any questions during voir dire, and had fallen asleep. In addition to these claims, Santostefano asserted, inter alia, the trial court had erred by not appointing a different attorney to represent him when he informed the court he was not "comfortable with his" counsel and claimed there were discovery violations.

STATE v. SANTOSTEFANO
Decision of the Court

¶3 The trial court denied relief, summarily dismissing the petition. It found claims that were or could have been raised on appeal were precluded, *see* Ariz. R. Crim. P. 32.2, and that Santostefano had not raised a colorable claim of ineffective assistance of trial counsel. Santostefano then filed a motion asking to stay the proceeding and supplement his petition. Stating it had already ruled on the petition, the court regarded the motion as one for rehearing and gave Santostefano additional time to research the court's rejection of his ineffective assistance claim. Santostefano then filed a motion for rehearing, adding a claim of ineffective assistance of appellate counsel.

¶4 In its ruling on the motion for rehearing, the trial court addressed and rejected on the merits Santostefano's newly raised claim that appellate counsel had been ineffective in (1) failing to challenge on appeal the trial court's failure to appoint a different attorney to represent him at trial, and (2) failing to challenge the search of the vehicle pursuant to the warrant. Reconsidering its prior ruling on the claim of ineffective assistance of counsel, the court again stated Santostefano had failed to raise a colorable claim for relief. With respect to Santostefano's claim that trial counsel had been ineffective during voir dire and had fallen asleep, the court stated that although it was Santostefano's burden to prove his claim, it had reviewed the video recording of the jury selection process, saw nothing "unusual" during the process and found Santostefano's claim that counsel repeatedly had fallen asleep "preposterous."

¶5 In his petition for review, Santostefano reasserts the majority of the claims he raised below. In addition, he appears to raise issues and make arguments that he did not present below. We will not consider claims and arguments raised for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 467-68, 616 P.2d 924, 927-28 (App. 1980). In both of its rulings, the trial court identified the claims Santostefano had raised, thoroughly and correctly resolving them in a manner that has permitted us to review and determine the propriety of its ruling; "[n]o useful purpose would be served by this court rehashing the trial court's correct ruling[s]" here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather,

STATE v. SANTOSTEFANO
Decision of the Court

based on the record before us, which includes the transcript and video recording of the jury selection process, we conclude Santostefano has not sustained his burden of establishing the trial court abused its discretion in dismissing Santostefano's petition for post-conviction relief and in denying his motion for rehearing. We, therefore, adopt the court's rulings. *Id.*

¶6 We grant the petition for review but for the reasons stated, we deny relief.